IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petition No.17620 of 2006

M/s. Vijaya Granites, represented
by its Proprietor Chinniah alias Kasi,
Tirupathur, Sivagangai District. Petitioner

v.

1. Government of Tamil Nadu,
represented by the Secretary,
Industries Depaertment,
Fort St. George, Chennau 600 009.

2. The Director of Geology and Mining,
Guindy, Chennai 600 032.

3. The District Collector, Madurai.

4. The Assistant Director (Mines),
Office of the District Collector,
Madurai. Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of writ of certiorarified mandamus calling for the records of the first respondent in G.O.2-D No.40, Industries (MMBI) Department dated 07.06.1999 communicated to the petitioner by letter in Roc. No.937 of 2006 dated 09.06.2006 by the fourth respondent and quash the same and consequently direct the first respondent to grant lease in respect of granite quarry over an extent of 0.64.0 hectares in survey No.529/1 of the Thiruvadavur, Melur Taluk, Madurai District for a sum of Rs.1,20,00,000/- to the petitioner.

For Petitioner : Mrs.AL.Gandhimathi
For Respondents : Mr.R.Thirugnanam,
Special Government Pleader

ORDER

The petitioner has filed this writ petition for the issue of writ of certiorarified mandamus calling for the records of the first

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respondent in G.O. 2-D No.40, Industries (MMBI) Department dated 07.06.1999 communicated to the petitioner by letter in Roc. No.937 of 2006 dated 09.06.2006 by the fourth respondent and quash the same and consequently direct the first respondent to grant lease in respect of granite quarry over an extent of 0.64.0 hectares in survey No.529/1 of the Thiruvadavur, Melur Taluk, Madurai District for a sum of Rs.1,20,00,000/- to the petitioner.

2. The case of the petitioner is that respondents 3 and 4 had conducted the public auction-cum-tender for grant of granite quarry lease in respect of 0.64.0 hectare of land in survey No.521/1, Melur taluk, Madurai district. The petitioner participted in the tender-cum- pulic auction and offered a sum of Rs.1,20,00,000/- as his bid amount in the auction by paying Rs.1,00,000/- as Earnest Money Deposit. Thereafter, he did not hear anything from the respondent. The petitioner made several representations and approached the office of the third respondent several times, but in vain. The petitioner was made to run from pillar to post in futile. As nothing was forthcoming from the respondents, on 06.06.2006 the petitioner made a representation to the fourth respondent requesting him to grant quarry lease since he was the highest bidder. On 09.06.2006, the fourt respondent sent a communication enclosing therewith an order of the Government dated 07.06.1999 cancelling the letter of commitment issued in favour of the petitioner. The petitioner was served neither with the letter of commitment said to have been issued by the first respondent; nor was he served with any show cause notice as to why the said letter of commitment should not be cancelled; nor was he given any personal hearing before the order of cancellation was passed; nor was he communicated with the said order of cancellation of the letter of commitment dated 07.06.1999. For the first time, to the shock and surprise to the petitioner, he came to know from the communication dated 09.06.2006 from the fourth respondent that the grant of lease made in his favour was cancelled, for no fault of his. Hence, the present writ petition with the prayer as stated above.

3. The first respondent filed a counter affidavit through the Deputy Secretary to Government, Industries Department. The crux of the counter is that out of five persons participated in the tender-cum-auction, the petitioner was the highest bidder for a sum of Rs.1,20,00,000/-. Hence, a proposal was sent by the third respondent to the first respondent through the second respondent on 27.01.1998 for grant of quarry lease in favour of the petitioner. The first respondent, in its letter dated 03.06.1998, had accepted the lease proposal and issued a letter of commitment in favour of the petitioner. It is further stated that by letter dated 17.06.1998 the petitioner was requested to pay the balance amount of Rs.1,19,00,000/-; area assessment of Rs.1,280/- and security deposit of Rs.12,00,000/- within one week from the date of receipt of the letter. Page 19 of the file maintained by the first respondent reflects the above position, however, in the counter affidavit there is some mistake in the amount. It is further stated in the counter affidavit that as the petitioner has neither remitted the amount nor

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sent any reply, the second highest bidder was informed to take the quarry as per Rules. The second highest bidder also failed to accept the offer. Ultimately, the first respondent by letter dated 07.06.1999 has cancelled the letter of commitment issued to the petitioner. The petitioner has not challenged the order dated 07.06.1999 at the earliest point of time. The petition has to be dismissed.

4. From the above pleadings, the point in dispute is whether the petitioner was served with the letters dated 03.06.1998, 17.06.1998 and 07.06.1999. If service of these letters on the petitioner is established, then the petitioner can have no case, as in the affidavit filed in support of the writ petition the non service of those letters has been taken as ground to seek the remedy in this writ petition. This Court, by its order dated 24.07.2006 directed the Government Pleader to produce the file relating to the subject matter so as to satisfy as to the correctness of the statement made by the petitioner. Subsequent to that, on 02.08.2006 counter affidavit above referred to, has been filed by the respondents and at the time of hearing of this case on 24.08.2006 two files – one maintained by the first respondent and the other by the third respondent – have been produced before this Court. In paragraph 4 of the counter affidavit, it is averred that the Government in their letter No.(D) No.148 Industries (MMB1) Department dated 03.06.1998 have accepted the lease proposals and issued a letter of commitment in favour of the petitioner subject to certain conditions. It is further averred therein that the letter of commitment in favour of the petitioner was despatched. It is further averred in para 5 of the counter affidavit that a letter in R.C.No.2/98 dated 17.06.1998 requesting the petitioner to pay the balance lease amount was sent to the petitioner by the third respondent on 23.06.1998. The petitioner was reminded by a letter dated 21.07.1998 and the same was despatched on 23.07.1998. The petitioner neither remitted the amount nor sent any reply. On the recommendation of the third respondent by letter dated 28.01.1999 the first respondent by its order in G.O.2-DNo.40, Industries (MMB1) Department dated 07.06.1999 cancelled the letter of committment and the same was despatched to the petitioner. This averment is available in para 6 of the counter affidavit.

5. I perused the file maintained by the respondents produced before the Court. The order dated 03.06.1998 of the first respondent is not available in the file of the 1st respondent. However, a copy of the said letter marked to the third respondent is available at page 49 of the file maintained by the third respondent. There is no material whatsoever in either of the files to establish that the copy has been sent to the petitioner. By that letter found at page 49 addressed to the petitioner and copy marked to the third respondent, the first respondent has accepted the recommendations of the third respondent for grant of lease in favour of the petitioner and directed the third respondent to proceed further. As already stated, the letter dated 03.06.1998 was addressed to the petitioner, but there is no material to establish that the letter has been

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communicated to the petitioner either in the file maintained by the first repondent or in the file maintained by the third respondent. The letter dated 17.06.1998 is a letter from the third respondent, as stated above, directing the petitioner to pay the balance amount. There are two drafts and one fair copy which are found from pages 53 to 57 of the file maintained by the third respondent. At page 58 there is a noting to the effect that the said letter was despatched on 23.06.1998, but what is the mode of despatch – whether it was sent by ordinary post or by registered post – is not available. At page 53, there is a noting in the right side top of the letter "By RPAD". Here again, there is no ackowledgment or a copy of the postal receipt for having sent the letter by registered post available, to establish that the letter was sent by registered post to the petitioner. The last of the letters dated 07.06.1999 is the order of first respondent cancelling the letter of commitment. A copy of this order is available in page 53 of the file maintained by the first respondent without any signature on it. Of course the original note file order is available on the file. The copy of the said letter marked to the third respondent is available at page 131 of the file maintained by the third respondent. As seen from the file, the said order has been received by the third respondent on 15.07.1999 which is evident from the third respondent's office seal affixed on the face of the order. But there is absolutely no material available in the file to establish that this order also is served on the petitioner either by the first respondent or by the third respondent. Though there are many correspondence between the first and the third respondents, as could be seen form the files, the petitioner was completely in dark and there is no proof to establish that any one of the letters has been served on the petitioner. That might be the reason that the counter affidavit is carefully couched by stating that those letters have been despatched to the petitioner, but the fact remains that even for such a despatch of those three letters, there is no proof available with either of the respondents. Hence, this Court has to accept the contention of the petitioner that none of the letters has been received by the petitioner.

6. Having come to the conclusion on the basis of the files produced before this Court as aforesaid, the necessary corollary is that the petitioner has established his case about the non receipt of the said letters. Hence, the petitioner cannot be found fault with for non payment of the balance amount, as directed by the third respondent in his letter dated 17.06.1998. It is pertinent to note here that even the reminder letter dated 21.07.1998 is not established to be served on the petitioner. Hence, the order passed non suiting the petitioner for grant of lease on the ground that he has not paid the amount within the time stipulated in that letter is to be set aside and it is accordingly set aside. The respondents are directed to proceed with starting from the stage of letter dated 17.06.1998 by giving the petitioner the statutory time and directing him to pay the balance amount and if the petitioner pays the amount within the time granted by the petitioner, then the first respondent is directed to grant lease in favour of the

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petitioner. The writ petition is allowed to that extent. The rule is made absolute. No costs. The connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government of Tamil Nadu,
   Industries Depaertment,
   Fort St. George, Chennau 600 009.

2. The Director of Geology and Mining,
   Guindy, Chennai 600 032.

3. The District Collector, Madurai.

4. The Assistant Director (Mines),
   Office of the District Collector,
   Madurai.

PLI (CO)
km/2.9.

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